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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DANE NOLAN BURKE,
1204 Westwood Road
Natchez, MS 39120

Physical Therapy License No. PT 29691,
Respondent.

Case No.

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Steven K. Hartzell ("Complainant") brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California ("Board").
2. On or about September 8, 2004, Physical Therapy License number PT 29691 was issued by the Board to respondent Dane Nolan Burke (hereinafter "respondent"). At all times relevant to this proceeding, except as noted below, said license has been in full force and effect and will expire unless renewed on August 31, 2006. On November 8, 2005, the Office of Administrative Hearings issued an *ex parte* interim order of suspension of respondent's license pursuant to Business and Professions Code section 11529 (hereafter "Code."). The interim order of suspension was continued after the noticed hearing on December 29, 2005.

1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the
3 following sections of the Business and Professions Code:

4 A. Business and Professions Code section 2609 of the Physical
5 Therapy Practice Act provides that the Board shall take action against any licensee who is
6 charged with unprofessional conduct.

7 B. Section 2660 (g) of the Code provides that unprofessional conduct
8 includes, but is not limited to, the addiction to the excessive use of any habit-forming drug and
9 constitutes grounds for disciplinary action.

10 C. Section 2660 (i) of the Code provides that unprofessional conduct
11 includes, but is not limited to, violations of the Medical Practice Act.

12 D. Section 2239 of the Medical Practice Act provides that
13 unprofessional conduct includes the use of controlled substances or dangerous drugs.

14 E. Section 11055(b)(6) of the Health and Safety Code defines cocaine
15 as a Schedule II controlled substance.

16 **RECOVERY OF COSTS**

17 4. Section 125.3 of the Code provides, in part, that the Physical Therapy
18 Board may request the administrative law judge to direct a licentiate found to have committed a
19 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
20 investigation and enforcement of the case.

21 5. Section 2661.5 of the Code provides, in part, that the Board may request
22 the administrative law judge to direct any licentiate found to have committed a violation or
23 violations of the licensing act to pay the Board the sum not to exceed the reasonable costs of the
24 investigation and prosecution of the case.

25 6. Respondent has engaged in conduct constituting violations of Code
26 sections 2609 and 2660 of the Physical Therapy Practice Act and section 2239 of the Medical
27 Practice Act, as set forth in greater detail herein below.

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FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct and Use of Controlled Substance)
[Bus. & Prof. Code §§ 2660 and 2239]

7. On or about April 26, 2005, respondent self-referred to the Physical Therapy Board's Diversion Program for his addiction to cocaine. As part of the Board's Diversion Program, the Board contracts with "Maximus" for treatment of the Board's licensees. Program participants are required to sign and agree to a "Diversion Program Recovery Contract" that provides, in part, for the licensee to completely abstain from use of "mind-altering substances," agree to individual therapy once a week, attend 12-step meetings five (5) days a week, and to attend support groups twice a week.

8. On July 7, 2005, respondent suffered a relapse of his use of cocaine. And on July 8, 2005, respondent tested positive for cocaine use.

9. On November 2, 2005, respondent was terminated from the Board's Diversion Program for the following reasons:

- “● Dane Burke tested positive for Cocaine on 07/06/05.
- Dane Burke has not called into CVI to submit to Random Body Fluid Testing since 09/10/05.
- Dane Burke self-reported a two-week long relapse on Crack Cocaine beginning on 09/17-18/05.
- Dane Burke's Health Support Group Facilitator, Francine Farrell reported on 11/01/05 that she suspected that Dane Burke had again relapsed and could not be located.
- Dane Burke has failed to submit his monthly Self-Report and 12-Step Signature Verification Cards for the months of October and September, 2005.
- Dane Burke has not entered an inpatient/residential treatment program for chemical dependency treatment as required of him by his MAXIMUS Recovery Contract dated 10/07/05.
- Dane Burke has not contacted MAXIMUS since 10/18/05, even though he was verbally counseled to maintain close (weekly to bi-weekly) contact with his Clinical Case Manager.”

10. Respondent's conduct as set forth in paragraphs 7 through 9, above, constitute unprofessional conduct in violation of section 2660 and 2239 of the Code.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board issue a decision:

1. Revoking or suspending License Number PT 29691, issued to Dane Nolan Burke, PT.
2. Ordering Dane Nolan Burke, PT, to pay the Physical Therapy Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5.
3. Taking such other and further action as deemed necessary and proper.

DATED: January 5, 2006.

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
State of California
Complainant